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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/547,998	12/19/2005	Stephane Lavallee	BEAUMONT-23	5946
45722	7590	12/23/2008	EXAMINER	
Howard IP Law Group P.O. Box 226 Fort Washington, PA 19034		LAWSON, MATTHEW JAMES		
		ART UNIT		PAPER NUMBER
		4138		
		MAIL DATE		DELIVERY MODE
		12/23/2008		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/547,998	LAVALLEE, STEPHANE
	<b>Examiner</b>	<b>Art Unit</b>
	MATTHEW LAWSON	4138

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 6/2/2005.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 11-21 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 11-21 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 09 September 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>3/9/2006</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Specification***

The abstract of the disclosure is objected to because it contains phrases that can be implied, *i.e.* "The invention relates to". Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. **It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine

the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “quincunx” in claim 17 is used by the claim to mean the orientation of blades 28a-d in figures 1-3 do not appear to be in “quincunx” arrangement, while the accepted meaning is “an arrangement of things by fives in a square or a rectangle, one being placed at each corner and one in the middle.” The term is indefinite because the specification does not clearly redefine the term.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neubauer et al. (US 2002/0068942) in view of Fisher et al. (US 5,422,789).

Regarding claims 11-21, Neubauer discloses a position locating instrument (figure 1, 20) comprising a base (figure 1, 22) connected to means (figure 1, 21) capable of determining the position of the instrument, a plate moving along with the base for insertion into an opening (figure 2a, feature 1a, paragraph 28) of a bone cutting guide (figures 2a-e), and means (figure 1, 24a-b) between the plate and the guide to prevent a movement of the instrument when it is inserted in the opening (paragraph 28).

The instrument in which the means capable of determining the position of the instrument comprise a rigid body (figure 1, 21) solidly connected to the base (figure 1, feature 22, paragraph 28) on which are arranged back-reflective disks (figure 1, 22a-c). The position locating instrument also comprising markers (figure 1, 22a-c) capable of cooperating with means for locating the position of the marker (paragraph 28).

Neubauer lacks the teaching of the mounting mechanism having a means for compensating play between the plate and the guide comprising at least three flexible blades and the play compensation means being resilient.

Fisher teaches an improved mounting mechanism containing play compensation means and at least three bent flexible blades (figure 4b, 30) with a tapered end provided to bear against a surface of the opening and a complimentary surface (figures 4-7, column 5, lines 2-14) to provide an improved fitting grip while still allowing easy dismounting of the parts. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Neubauer to contain the flexible blades of Fisher to improve the grip of the head portion in the slot and to increase resistance to being forcibly removed which improves the fitting grip while allowing easy retrieval from the instrument from the cutting guide.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW LAWSON whose

telephone number is (571)270-7375. The examiner can normally be reached on M-F, 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Melba Bumgarner can be reached on 571-272-4709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melba Bumgarner/  
Supervisory Patent Examiner  
Art Unit 4138

/M. L./  
Examiner, Art Unit 4138